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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**
11

12 JAMI ZUCCHERO, individually and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 HEIRLOOM ROSES, INC.,

16 Defendant.
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Case No. 4:22-cv-00068-KAW

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 21, 2023
Time: 1:30 pm
Judge: Hon. Kandis A. Westmore

Before the Court is Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, (the "Motion"), the terms of which are set forth in a Settlement Agreement with accompanying exhibits attached as **Exhibit 2** to Plaintiff's Motion (the "Settlement Agreement").¹ Having fully considered the issue, the Court hereby **GRANTS** the Motion and orders as follows:

1. Class Certification for Settlement Purposes Only. The Settlement Agreement provides for a Settlement Class defined as follows:

"All individuals within the United States whose name and payment card information was potentially exposed to unauthorized third-parties as a result of the Data Security Incident that occurred between approximately February to October of 2021."

Excluded from the Settlement Class is any judge presiding over the Litigation and their first-degree relatives, judicial staff and persons who timely and validly request exclusion from the Settlement Class.

Pursuant to Federal Rules of Civil Procedure Rule 23(e)(1), the Court finds giving notice is justified. The Court finds that it will likely be able to approve the proposed Settlement as fair, reasonable and adequate. The Court also finds it will likely be able to certify the Settlement Class and California Subclass for purposes of judgment on the Settlement because they meet the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes only that (i) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable, (ii) there are issues of law and fact that are common to the Settlement Class, (iii) the claims of Representative Plaintiff are typical of and arise from the same operative facts and Representative Plaintiff seeks similar relief as the claims of the Settlement Class Members, (iv) Representative Plaintiff will fairly and adequately protect the interests of the Settlement Class as Representative Plaintiff has no interest antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this Litigation on behalf of the Settlement Class, (v) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members and (vi) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this

¹ All defined terms herein have the same meaning as set forth in the Settlement Agreement.

1 Litigation.

2 **2. Settlement Class Representatives and Settlement Class Counsel.** The Court
3 finds Plaintiff Jami Zuccherro will likely satisfy the requirements of Rule 23(e)(2)(A) and should
4 be appointed as Settlement Class Representative. Additionally, the Court finds that Scott Edward
5 Cole and Laura Van Note of Cole & Van Note satisfy the requirements of Rule 23(e)(2)(A) and
6 should be appointed as Settlement Class Counsel pursuant to Rule 23(g)(1).

7 **3. Preliminary Settlement Approval.** Upon preliminary review, the Court finds the
8 Settlement is fair, reasonable and adequate to warrant providing Notice of Settlement to the
9 Settlement Class and accordingly is preliminarily approved. In making this determination, the
10 Court has considered the monetary and nonmonetary benefits provided to the Settlement Class
11 through the Settlement, the specific risks faced by the Settlement Class in prevailing on their
12 claims, the stage of the proceedings at which the Settlement was reached and the discovery that
13 was conducted, the effectiveness of the proposed method for distributing relief to the Settlement
14 Class, the proposed manner of allocating benefits to Settlement Class Members and all of the other
15 factors required by Rule 23.

16 **4. Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C.
17 § 1332(d)(2) and personal jurisdiction over the Parties before it. Additionally, venue is proper in
18 this District pursuant to 28 U.S.C. § 1391(b)(1).

19 **5. Final Approval Hearing.** A Final Approval Hearing shall be held on _____
20 _____, 202____, at _____ [via telephone or videoconference or in-person] at the Ronald V.
21 Dellums Federal Building & United States Courthouse at 1301 Clay Street, Oakland, California
22 94612 to determine, among other things, whether (i) this Litigation should be finally certified as a
23 class action for settlement purposes pursuant to Fed. R. Civ. P. Rule 23(a) and (b)(3), (ii) the
24 Settlement should be approved as fair, reasonable and adequate and finally approved pursuant to
25 Fed. R. Civ. P. Rule 23(e), (iii) Settlement Class Members should be bound by the releases set
26 forth in the Settlement Agreement, (iv) the application of Settlement Class Counsel for an award
27 of attorneys' fees, costs and expenses should be approved pursuant to Fed. R. Civ. P. Rule 23(h)
28 and (v) the application of the Settlement Class Representative for a Service Award should be

1 approved.

2 **6. Claims Administrator.** The Court appoints CPT Group as the Claims
3 Administrator, with responsibility for class notice and claims administration. The Claims
4 Administrator is directed to perform all tasks the Settlement Agreement requires. The Claims
5 Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

6 **7. Notice.** The proposed Notice Plan set forth in the Settlement Agreement and the
7 Notices and Claim Form attached to the Settlement Agreement as **Exhibits A, B and C** are hereby
8 approved. Non-material modifications to these Exhibits may be made with approval by the Parties
9 but without further order of the Court.

10 **8. Findings Concerning Notice.** The Court finds the proposed form, content and
11 method of giving Notice to the Settlement Class as described in the Notice Plan and the Settlement
12 Agreement and its Exhibits (i) will constitute the best practicable notice to the Settlement Class,
13 (ii) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of
14 the pendency of the Litigation, the terms of the proposed Settlement and their rights under the
15 proposed Settlement, including but not limited to, their rights to object to or exclude themselves
16 from the proposed Settlement and other rights under the terms of the Settlement Agreement, (iii)
17 are reasonable and constitute due, adequate and sufficient notice to all Settlement Class Members
18 and other persons entitled to receive notice, (iv) meet all applicable requirements of law, including
19 Fed. R. Civ. P. Rule 23(c) and (v) the Due Process clauses of the United States Constitution. The
20 Court further finds the Notice is written in plain language, uses simple terminology and is designed
21 to be readily understandable by Settlement Class Members.

22 The Claims Administrator is directed to carry out the Notice in conformance with the
23 Settlement Agreement.

24 **9. Class Action Fairness Act Notice.** Within 10 days after the filing of the motion
25 for preliminary approval, Defendant shall have served or caused to be served a notice of the
26 proposed Settlement on appropriate state officials in accordance with the requirements under the
27 Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).
28

1 **10. Exclusion from Class.** Any Settlement Class Member who wishes to be excluded
 2 from the Settlement Class must mail a written opt-out Request for Exclusion to the Claims
 3 Administrator at the address and in the manner provided in the Notice. Such opt-out Requests for
 4 Exclusion must meet the Opt-Out Deadline established by this Order and stated in the Notice.

5 For a Request for Exclusion to be properly completed and executed, subject to approval by
 6 the Court, it must (i) state the Settlement Class Member's full name, address and telephone
 7 number, (ii) contain the Settlement Class Member's personal and original signature or the original
 8 signature of a person authorized by law to act on the Settlement Class Member's behalf with
 9 respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian or
 10 person acting under a power of attorney and (iii) state unequivocally the Settlement Class
 11 Member's intent to be excluded from the settlement. All Requests for Exclusion must be submitted
 12 individually in connection with a Settlement Class Member (i.e., one request is required for every
 13 Settlement Class Member seeking exclusion).

14 Within 7 days after the Opt-Out Deadline, the Claims Administrator shall provide the
 15 Settling Parties with a complete and final list of all Opt-Outs who have timely and validly excluded
 16 themselves from the Settlement Class and, upon request, copies of all completed Requests for
 17 Exclusions.

18 If the final Judgment is entered, any Settlement Class Member who has not submitted a
 19 timely, valid written Opt-Out Request for Exclusion from the Settlement Class shall be bound by
 20 all subsequent proceedings, orders and judgments in this Litigation, including but not limited to
 21 the release set forth in the Final Judgment. Settlement Class Members who submit valid and timely
 22 Opt-Out Requests for Exclusion shall not be entitled to receive any benefits from the Settlement.

23 **11. Objections and Appearances.** A Settlement Class Member who does not file a
 24 valid and timely Request for Exclusion may file with the Court a notice of intent to object to the
 25 Class Settlement Agreement. The Long Notice shall instruct Settlement Class Members who wish
 26 to object to the Agreement to send their written objections only to the Court. The Notice shall
 27 make clear the Court can only approve or deny the Class Settlement Agreement and cannot change
 28 the terms. The Notice shall advise Settlement Class Members of the deadline for submission of

1 any objections. Any such notices of an intent to object to the Class Settlement Agreement must be
2 written and must include all of the following: (i) the objector's full name, address, telephone
3 number and email address (if any), (ii) information identifying the objector as a Settlement Class
4 Member, including proof that the objector is a member of the Settlement Class, (iii) a statement as
5 to whether the objection applies only to the Settlement Class Member, to a specific subset of the
6 Settlement Class or to the entire class, (iv) a clear and detailed written statement of the specific
7 legal and factual bases for each and every objection, accompanied by any legal support for the
8 objection the objector believes applicable, (v) the identity of any counsel representing the objector,
9 (vi) a statement whether the objector intends to appear at the Final Approval Hearing, either in
10 person or through counsel, and, if through counsel, identifying that counsel, (vii) a list of all
11 persons who will be called to testify at the Final Approval Hearing in support of the objections and
12 any documents to be presented or considered and (viii) the objector's signature and the signature
13 of the objector's duly authorized attorney or other duly authorized representative. To be timely,
14 written notice of an objection in the appropriate form must be filed or postmarked no later than the
15 Objection Deadline.

16 Any Settlement Class Member who fails to comply with the provisions in this Order will
17 waive and forfeit any and all rights they may have to object, will have their objection stricken from
18 the record and will lose their rights to appeal from approval of the Settlement. Any such Settlement
19 Class Member also shall be bound by all subsequent proceedings, orders and judgments in this
20 Litigation, including but not limited to the release set forth in the Final Judgment.

21 **12. Claims Process.** Settlement Class Counsel and Defendant have created a process
22 for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily
23 approves this process and directs the Claims Administrator to make the Claim Form or its
24 substantial equivalent available to Settlement Class Members in the manner specified in the
25 Notice.

26 The Claims Administrator will be responsible for effectuating the claims process.

27 Settlement Class Members who qualify for and wish to submit a Claim Form shall do so
28 in accordance with the requirements and procedures specified in the Notice and the Claim Form.

1 If the Final Judgment is entered, all Settlement Class Members who qualify for any benefit under
2 the Settlement but fail to submit a claim in accordance with the requirements and procedures
3 specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit
4 but will in all other respects be subject to and bound by the provisions in the Final Judgment,
5 including the release.

6 **13. Termination of Settlement.** This Order shall become null and void and shall be
7 without prejudice to the rights of the Parties, all of whom shall be restored to their respective
8 positions existing before the Court entered this Order and before they entered the Settlement
9 Agreement, if (i) the Court does not enter this Preliminary Approval Order, (ii) Settlement is not
10 finally approved by the Court or is terminated in accordance with the Settlement Agreement, (iii)
11 there is no Effective Date, or (iv) the number of Opt-Outs is greater than five percent of the
12 estimated Settlement Class. In such event, the Settlement and Settlement Agreement shall become
13 null and void and be of no further force and effect and neither the Settlement Agreement nor the
14 Court's orders, including this Order, relating to the Settlement shall be used or referred to for any
15 purpose whatsoever.

16 **14. Use of Order.** This Order shall be of no force or effect if the Final Judgment is not
17 entered or there is no Effective Date and shall not be construed or used as an admission, concession
18 or declaration by or against Defendant of any fault, wrongdoing, breach or liability. Nor shall this
19 Order be construed or used as an admission, concession or declaration by or against the
20 Representative Plaintiff or any other Settlement Class Member that his or her claims lack merit or
21 that the relief requested is inappropriate, improper, unavailable or as a waiver by any party of any
22 defense or claims they may have in this Litigation or in any other lawsuit.

23 **15. Continuance of Hearing.** The Court reserves the right to adjourn or continue the
24 Final Approval Hearing and related deadlines without further written notice to the Settlement
25 Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on
26 the Settlement Website maintained by the Claims Administrator. The Court may approve the
27 Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without
28 further notice to the Settlement Class.

1 **16. Stay of Litigation.** All proceedings in the Litigation other than those related to
 2 approval of the Class Settlement Agreement are hereby stayed. Further, any actions brought by
 3 Settlement Class Members concerning the Released Claims are hereby enjoined and stayed
 4 pending Final Approval of the Class Settlement Agreement.

5 **17. Schedule and Deadlines.** The Court orders the following schedule of dates for the
 6 specified actions/further proceedings:

Event	Timing
Defendant Provides CAFA Notice required by 28 U.S.C. § 1715(b)	Within 10 days after the filing of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement
Defendant Provides Class List to Claims Administrator	Within 15 days after entry of this Preliminary Approval Order
Notice Deadline for Claims Administrator to Send Summary Notice	Within 15 days after receiving the Settlement Class list from Defendant
Motion for Attorneys' Fees, Reimbursement of Costs and Expenses and Service Award to be Filed by Class Counsel	At least 14 days before the Objection Deadline
Postmark Deadline for requests for Exclusion (Opt-Out) or Objections	75 days after entry of this Preliminary Approval Order
Postmark/Filing Deadline for Filing Claims	90 days after Notice Deadline
Motion for Final Approval to be Filed by Class Counsel	At least 14 days before the Final Approval Hearing
Final Approval Hearing	No earlier than 100 days after entry of this Preliminary Approval Order

SO ORDERED.

Dated:

**HONORABLE KANDIS A. WESTMORE
UNITED STATES MAGISTRATE JUDGE**